Blankenship and Associates, Inc. and Rayford T. Blankenship *and* United Food and Commercial Workers International Union, Local 72, AFL–CIO–CLC. Case 4–CA–16503–2

March 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On July 18, 1990, Administrative Law Judge Bruce C. Nasdor issued the attached decision. The Respondents filed exceptions and a supporting brief and the General Counsel filed cross-exceptions and a supporting brief. The General Counsel also filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order, as modified.

The judge's Order did not expressly apply to Respondents when they act as agents for any employer over whom the Board would assert jurisdiction.[3] On the other hand, the judge's Order was broad in the sense that it forbade Respondents from engaging in not only the specific conduct involved herein but also conduct which ''in any other manner'' interferes with, restrains, or coerces employees in the exercise of their Section 7 rights. For the reasons set forth below, we believe that the Order should expressly apply to Respondents when they act as agents for any employer over whom the Board would assert jurisdiction. However, as also explained below, we do not believe that the Order should contain the broad language ''in any other manner.''

With respect to the first point, we review briefly Respondents' history of misconduct. For more than a decade, Blankenship's name has come before the Board as an agent who has committed repeated unlawful acts on behalf of the employer/clients who hired him. Respondents' pattern or practice of violations include: unlawful threats of loss of work or plant closing,[4] unlawful undermining of support for a union by urging employees to bargain directly with the employer,[5] overall bad-faith bargaining,[6] locking out employees while engaging in bad-faith bargaining,[7] and unlawful solicitation of grievances and promise of benefits.[8]

The facts of the instant case demonstrate that Respondents' conduct continued when they acted for yet another client, Gress Poultry. Both Blankenship and his associate, Attorney Richard Buntele, made numerous threats of plant closure. At a meeting of all day-shift employees, Blankenship spoke about two employers who closed their plants because of the union. He said that, in one case, the employer put a large padlock on the plant the day after the union won an election. To dramatize the point, Blankenship then raised a padlock and told the employees it would be put on the doors if the Union came in. He repeated this graphic reference to plant closure on the day of the election by holding up a picture of a lock and key in the presence of employees and by telling union organizers, in the presence of employees, that the Employer had given him a padlock with a shaft as large as his thumb to put on the door when he closed the plant.

In a speech to all day-shift employees, Blankenship's associate, Attorney Richard Buntele, claimed that if the Union got in, the Employer would lock up the place and retire. According to an employee at the meeting, Buntele stated that ''Jim Gress' wife was sick, and that Jim Gress didn't have to negotiate with us because he would move to a warmer climate to be with his wife.''[9]

On the day of the election, Blankenship got into a shouting match with union organizers Beierle and

[1] The General Counsel has excepted to the judge's discrediting of Rayford T. Blankenship's testimony. We find merit in this exception. Although Blankenship represented himself, cross-examined some of the General Counsel's witnesses, and made comments on their testimony, he did not testify and cannot therefore be discredited. The judge's error, however, does not affect his other findings and conclusions which are in most instances based on the uncontradicted testimony of the General Counsel's witnesses and are otherwise supported by a clear preponderance of all the relevant evidence.

[2] We agree with the judge's conclusion that it is of no significance whether the Respondents meet any standard for assertion of Board jurisdiction because this case involves the employees of Gress Poultry, an employer engaged in commerce within the meaning of the Act. The Board has long asserted jurisdiction over labor consultants solely on the basis of the commerce of the employer whose employees have been subjected to the conduct alleged to be unlawful. See, e.g., *National Lime & Stone Co.*, 62 NLRB 282, 285–286 (1945); *National Welders Supply Co.*, 132 NLRB 660, 666 (1961); and *Chalk Metal Co.*, 197 NLRB 1133, 1134 (1972).

Moreover, the Respondents' answers to the consolidated complaint and the amendment to the consolidated complaint in this case are silent with regard to the allegations concerning jurisdiction. Nor have the Respondents presented evidence to show good cause as to why their failure to respond to the commerce allegations should not be deemed an admission. Thus, under Sec. 102.20 of the Board's Rules and Regulations, the allegations are deemed admitted.

[3] When the Board intends to grant such an order, it expressly does so. See *Chalk Metal*, supra at 1154, and *West Coast Liquidators*, 205 NLRB 512, 517 (1973).

[4] *Meyer Stamping & Mfg. Co.*, 237 NLRB 1322 (1978); *Plastic Film Products Corp.*, 238 NLRB 135 (1978); *Hochstetler & Sons*, 224 NLRB 39 (1976).

[5] *Flex Plastics*, 262 NLRB 651 (1982).

[6] *Parkview Nursing Center II Corp.*, 260 NLRB 243 (1982).

[7] *Vore Cinema Corp.*, 254 NLRB 1288 (1981).

[8] *Mark Twain Marine Industries*, 254 NLRB 1095 (1981).

[9] Buntele's misconduct is all the more regrettable because he, unlike Blankenship, is an attorney licensed to practice law and, therefore, charged with an even higher duty to honor and respect the law.

Scalzo. Blankenship ridiculed Scalzo's appearance and said he was fat because he worked for the Union. He commented on Beierle's leather overcoat and said Beierle must have gotten it because he makes a lot of money working for the Union. Blankenship then told Beierle that he, Blankenship, might be an old man ''but if you take that coat off I'll kick the shit out of you.'' Blankenship ended this encounter by stating three or four times that he was hired to legally close the plant. All of this occurred on the sidewalk in front of the plant at a time when employees were leaving work.

Blankenship's misconduct extended beyond these threats. On the morning of the election, Blankenship took a ''vote yes'' sign from the window of a car parked near the employee parking area. He refused to give the sign to union organizer Chorpenning and tore it in half in front of employees. On election day, Blankenship openly photographed employees and union organizers. As the judge found, Blankenship did not show ''a scintilla of legitimate justification'' for this action.

In sum, Respondents' conduct in the earlier cases and in this case clearly warrants the Order described above. The Respondents have engaged in misconduct as agents for many different employer-clients. Accordingly, we are concerned that, absent constraint, Respondents will engage in misconduct for other clients in the future. Further, we note that, as a practical matter, an order confined to Blankenship when acting as an agent for Gress Poultry would be meaningless. Blankenship's agency relationship with Gress Poultry has ended. We therefore consider it appropriate to enter an order which applies to Respondents when they act as agents for any employer over whom the Board would assert jurisdiction.

We recognize that Respondents were not named as respondents in the earlier cases. However, we note that, in *Chalk Metal Co*., supra, the Board's similarly broad order against the consultant was based in part on misconduct in cases in which she was not named as respondent. In a subsequent case, *West Coast Liquidators*, supra, the Board relied on *Chalk Metal* to enter another similarly broad order. The Ninth Circuit enforced the order in this respect, i.e., with respect to its application to the consultant when acting as agent for any employer subject to NLRB jurisdiction.[10]

We also recognize that the order in *Chalk Metal* was the *second* Board order against the consultant. However, *Chalk Metal* did not impose a per se rule that a broad order can never be entered in a first case against a respondent. Further, in the subsequent *Hickmott* opinion, the Board eschewed per se rules and made it clear that each situation is to be evaluated on its own facts.[11] Thus, there is no hard and fast rule that a respondent be given one free bite at the apple before effective relief is entered.

Based on the above, we shall expressly provide that the order extend to Respondents when they act as agents for any employer over whom the Board would assert jurisdiction. However, the fact that the Order is broad in that sense does not necessarily mean that it should also be broad in the sense that it forbids Respondents from engaging in not only specified conduct but also conduct which, ''in any other manner,'' interferes with, restrains, or coerces employees in the exercise of Section 7 rights. The issues concerning these two remedial orders are wholly different. The question of whether to grant a broad order in the first sense turns on whether the Board has a reasonable concern that Respondents, having committed misconduct as agents for some clients, may engage in like or related misconduct as agents for future clients. As set forth above, we believe that Respondents' history amply justifies that concern. By contrast, the question of whether the order should contain the broad language ''in any other manner'' turns on whether Respondents' conduct meets the test of *Hickmott Foods*, as applied by the Board.[12] We do not believe that Respondents' conduct meets that test. In this regard, we note that the instant case involves only 8(a)(1) violations. Although these violations were substantial in amount, mere substantiality does not warrant a remedial order containing the broad language ''in any other manner.''[13] Further, although the 8(a)(1) conduct included threats to close the plant, this factor does not necessarily warrant the broad remedial language.[14]

We recognize that the prior cases involving Respondents included 8(a)(1) *and (5)* misconduct. However, in *Dominquez Valley Hospital*, 287 NLRB 149 (1987), the Board refused to grant the broad remedial order notwithstanding the presence of 8(a)(1) violations and an 8(a)(5) withdrawal of recognition.

Concededly, there are some cases where a broad order is entered to remedy 8(a)(1) and (5) violations. However, these cases are clearly distinguishable. In *Koons Ford of Annapolis*,[15] and *International Door*,[16]

[10] *NLRB v. Selvin*, 527 F.2d 1273 (9th Cir. 1975).

[11] *Hickmott Foods*, 242 NLRB 1357 (1979).

[12] Under *Hickmott Foods*, supra, such an order is warranted ''when a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights.''

[13] *Springfield Jewish Nursing Home*, 292 NLRB 1266 (1989); *Emerson Electric Co*., 287 NLRB 1065 (1988); *SDC Investment*, 284 NLRB 131 (1987); *Uniontown Hospital Assn*., 277 NLRB 1298 (1985); *Southern Maryland Hospital*, 276 NLRB 1349 (1985).

[14] *Emerson*, supra; *SDC Investment*, supra.

[15] 282 NLRB 506 (1986).

[16] 303 NLRB 582 (1991).

the 8(a)(5) violation was based on *Gissel Packing*,[17] a doctrine not involved in this case. In *John Ascuaga's Nugget*, 298 NLRB 524 (1990), the respondent company had spent nearly 10 years evading its obligation, flouting Board and court orders in the process.

Finally, in *NLRB v. Selvin*, supra, the Court of Appeals for the Ninth Circuit declined to enforce the Board's Order insofar as it contained the language ''in any other manner,'' notwithstanding a history of 8(a)(5) conduct. At the same time, the court enforced the Board's Order insofar as it applied to the consultant (Selvin) when acting as agent of any employer over whom the Board would assert jurisdiction. Hence, the court enforced essentially the same kind of order that we enter here.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondents, Blankenship and Associates, Inc. and Rayford T. Blankenship, Greenwood, Indiana, their officers, agents, successors, and assigns, when acting as an agent for any employer subject to the jurisdiction of the Board, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(e).

''(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.''

2. Substitute the attached notice for that of the administrative law judge.

[17] 395 U.S. 575 (1969).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice when we are acting as an agent for any employer subject to the jurisdiction of the National Labor Relations Board.

WE WILL NOT threaten employees with plant closure and more difficult working conditions.

WE WILL NOT tell employees that Gress Poultry will not deal with the employees on a union negotiating committee if a union comes into the plant.

WE WILL NOT remove prounion or ''Vote Yes'' signs from automobiles belonging to employees or union organizers.

WE WILL NOT take pictures of employees or union organizers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

BLANKENSHIP AND ASSOCIATES, INC. AND RAYFORD T. BLANKENSHIP

Richard Paul Heller, Esq. and *William Slack, Esq.*, for the General Counsel.
Patrick M. Conly, Esq., for Gress Poultry, Inc.
Robert T. Anderson, Esq., for the Respondent.
Daniel C. Scalzo, Union Representative, for the Charging Party.

DECISION

STATEMENT OF THE CASE

BRUCE C. NASDOR, Administrative Law Judge. This case was tried at Scranton, Pennsylvania, on January 9, 10, and 11, 1989, and February 7, 1989.

The charge in this case was filed against Blankenship and Associates, Inc. (Associates) and Rayford T. Blankenship (Blankenship) by the Union on April 6, 1987. On August 8, 1988, the Regional Director issued an order consolidating cases, consolidated complaint and notice of hearing, consolidating the charge in this case with several other charges filed by the Union against Gress Poultry, Inc., concurrent with objections to an election filed by the Union in Case 4–RC–16382.

During the hearing, the General Counsel and Gress Poultry, Inc. executed a settlement agreement settling all the allegations against Gress Poultry, and a stipulation resolving the issues in the representation case. The Union agreed to withdraw charges against Gress Poultry and the agreement reserved the right for the General Counsel to introduce evidence obtained during the investigation of the charges against Gress Poultry in proceedings involving the allegations against both of the Respondents herein. I approved the settlement agreement on January 10, 1989, and this served to sever the cases involving Gress Poultry from the cases involving the Respondent, Blankenship, and Associates.

The consolidated complaint, as amended, alleges, inter alia, that Respondent Blankenship and Respondent Associates performed services as labor relation consultants for Gress Poultry. It is also alleged that Respondent Associates is an employer engaged in commerce within the meaning of the Act and that Respondent Blankenship is a supervisor of Respondent Associates within the meaning of the Act and an agent of Respondent Associates, and Gress Poultry. It is further alleged that Richard Buntele was a labor relations consultant for Respondent Associates and an agent of both Associates and Blankenship, and then Respondent Gress Poultry. Specifically it is alleged that Blankenship and Buntele engaged in various acts and conduct violative of Section 8(a)(1) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs,[1] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, Gress Poultry, is and has been at all times material, a Pennsylvania corporation engaged in the processing and sale of poultry at its Scranton, Pennsylvania plant.

During the past year the Employer, in the course and conduct of its business operations purchased and received goods and materials valued in excess of $50,000 directly from points outside the Commonwealth of Pennsylvania.

The Employer, Gress Poultry is, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent Associates is and has been at all times material, an Indiana corporation engaged in the business of labor consulting, including, but not limited to, representing management in labor relations matters from its principal office and place of business in Greenwood, Indiana.

During the past year, Respondent Associates performed services in excess of $50,000 for employers located in States other than the State of Indiana, each of which is engaged in interstate commerce.

Respondent Associates is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Facts

Gress poultry is a Poultry processing plant operating in Scranton, Pennsylvania, where it has been in business since 1941, with the exception of a period from 1969 through 1975 when it was owned by the A&P Company.

Gress Poultry (Gress) employs over 300 employees on 2 shifts, and a large number of employees who work part time. The employees can commence and cease work at their discretion without being penalized.

On October 16, 1986,[2] the Union filed a petition to represent the Gress production and maintenance employees. Thereafter, Gress hired the Respondent's who, in the words of Glenn Gress, Gress' vice president, ''run and anti-organizing campaign.''

During the preelection campaign Blankenship worked with Richard Buntele, a labor relations consultant with Associates, and Blankenship directed Buntele's performance. Blankenship and Buntele wrote letters to employees and conducted three meetings for each shift. The first and third series of meetings were conducted by both Buntele and Blankenship, and Buntele conducted the second series of meetings himself. Buntele testified that the second series of meetings were held about 10 days before the election and the third series of meetings on Monday, December 21, and the morning of Tuesday, December 22.

An election was conducted on December 23, in three shifts. The tally of ballots reflects that of 373 eligible voters, 114 voted for the Union and 185 against it, with 38 challenged ballots.[3] As stated earlier, I approved a stipulation setting aside the election, based on the Union's objections and the stipulation further provided for a second election, to be held on April 7, 1989.

Buntele's Speech

In early December, Buntele addressed all day-shift employees in the garage at the Gress Poultry plant.

Buntele, in the presence of one of Blankenship's sons, went over with the employees what benefits they already enjoyed verses what the Union could do for them. They also went over union-security clauses. Generally, Buntele addressed the relative merits of being represented or unrepresented by the Union and there was a question and answer period.

Buntele testified that he was asked by an employee whether Gress Poultry would move if the Union came in. According to his testimony he responded, ''the company always had the option to move, but it would have to bargain over the impact.''

According to the testimony of employee Charles Sears, Buntele claimed that if the Union got in Gress would lock the place up and retire. According to the testimony of Barbara Teddick, Buntele stated that ''Jim Gress'[4] wife was sick, and that Jim Gress didn't have to negotiate with us because he would move to a warmer climate to be with his wife.''

Sears testified further that Buntele stated that if the Union got in there would be no part-timers working at Gress Poultry. Teddick additionally testified that Buntele stated that employees could only keep their part-time status if the Union didn't get in. She also testified that Buntele advised the employees that Gress did not have to negotiate with the part-timers and did not have to give them raises.

Glenn Gress, general or plant manager, testified on behalf of the Respondents that he was present at all the meetings (speeches). He did not testify substantively with respect to Buntele's speech, he simply characterized it as a ''shouting match.'' No other witnesses testified with respect to Buntele's speech.

Blankenship's Speech

On or about December 26, all of the day-shift employees attended a third day-shift meeting, in the garage, where they were addressed by Edward Gress, Buntele, and Blankenship. Buntele testified that Blankenship told the employees about one of his clients who had lost an election and immediately padlocked its plant. According to Buntele, Blankenship also stated that Gress had a plant in the south that could handle all the work which was presently done in Scranton. Blankenship also asked the employees to remember that. Gress had been unionized when it was owned by the A&P Company. Buntele testified that this was a reference to the

[1] Counsel for the General Counsel's motion to strike reply brief is denied.

[2] All dates are in 1986 unless otherwise specified.

[3] The challenges were not sufficient to affect the results of the election.

[4] Edward Gress is sometimes known as Jim Gress.

Company being shut down by A&P before being repurchased by Gress. Buntele testified that in response to an employee question, Blankenship stated that if Gress Poultry became unionized it could shut down, move away, or do whatever it wanted.

Employee Brian Hastie testified that Blankenship told the employees on the day shift about two employers who closed their plants because of unions. One situation in Flint, Michigan, a union won an election by one vote and the employer put a large padlock on the plant the next day. Furthermore, an employer, Lutzlow Laundry, was taken to court by a union and the owner of the plant closed it the next day. Hastie also testified that Blankenship stated if the Union won the election the that Gress could either negotiate with the Union or close the plant. According to Hastie's recollection, Blankenship raised a padlock and said it would be put on the doors if the Union came in.

Moreover, according to Hastie, Blankenship stated if the Union won the election the Respondent did not have to deal with the employees but only with union officials.

Hastie testified that at the meeting, Edward Gress stated that his wife was sick and if the Union won the election, it would be more feasible for her well being to move to a warmer climate.

Hastie's affidavit, which was furnished to the Board, was consistent with his testimony. Moreover, Hastie had taken notes contemporaneously with Blankenship's statements.

Employees Barbara Teddick and Gladys Fox both confirmed that Blankenship stated at the meeting that Gress would padlock the building if the Union won the election. Moreover, Fox recalled Blankenship telling a story about a plant which was padlocked the day a union won the election.

Although Blankenship was present at the hearing, the only witness called on behalf of the Respondent was Glen Gress. Gress did not recall with any specificity what Blankenship stated to the employees. He testified that Blankenship generally engaged in propagandizing and antiorganizational campaign slogans. Also, movies were shown setting forth the parties respective rights. According to Gress' testimony, Blankenship did not threaten the employees with plant closure.

Statements by Blankenship to Union Organizers on December 22

On the afternoon of December 22, the day before the election, union organizers James Beierle and Dan Scalzo arrived at the sidewalk in front of the plant at the time the employees left work after Blankenship's speech. Beierle and Scalzo testified, essentially corroborating each other, that a heated discussion ensued, a yelling contest in the presence of employees. Blankenship allegedly made references to a scar on Scalzo's face and that Scalzo was fat because he worked for the Union making good money. Blankenship allegedly made remarks referencing Beierle's leather overcoat, stating he must have gotten it because he makes a lot of money working for the Union. According to Beierle, Blankenship stated that he, Blankenship, might be an old man, ''but if you take that coat off I'll kick the shit out of you.'' Blankenship allegedly stated that he was not hired by Gress Poultry to keep the Union out, he was hired to close the plant. According to Scalzo, Blankenship stated three or four times that he was hired to legally close the plant down.

Respondent did not call any witnesses with respect to this confrontation.

Blankenship's Statements to Union Organizers on the Morning of December 23

Between the hours of 6 and 7 a.m., on December 23, the day of the election, Scalzo, Beierle, and Adell Snyder, an organizing representative, were met by Blankenship at the employee parking lot. According to the union witnesses, they were asked in a loud voice by Blankenship what they would do about getting work for the employees when the plant closed. Beierle responded by asking whether Blankenship was trying to take the employees' jobs away. During this confrontation employees were arriving at the plant for the 7 a.m. shift and were in the area, including employees Rachko and Ennis. Organizer Michelle Kessler was on the scene, and observed Blankenship speaking but did not hear the conversation. Sometime later that morning Kessler had breakfast with other organizers and several employees. They had a conversation wherein Blankenship's early morning comments were related to each other reflecting what Blankenship has said Gress would do if the Union won the election. Respondent did not call any witnesses with respect to these allegations.

Blankenship's Removal of a ''Vote Yes'' Union Sign

On the morning of the election, Kessler parked her car on a street across from the plant near the employee parking area. She placed a sign saying ''Vote Yes'' which had been constructed by stapling together two picket signs, under her front windshield wiper. Buntele, Beierle, String, and organizer Chorpenning, testified that they saw Blankenship take the sign out from under the windshield and walk away with it. Chorpenning asked him what he was doing and Blankenship said the sign was illegal. Chorpenning attempted without success to grab the sign and Blankenship took it to the plant.

Teddick, an employee, testified that she saw Blankenship tear the sign in half outside of the plant. Kessler's recollection was that Blankenship took the sign into the plant, tore it apart, and laughed when realizing it was constructed from picket signs.

Buntele and Beierle recalled that employees were walking to and from work at the time, although Kessler testified that only union organizers were present at the time.

Employee Kovach testified that sometime later that morning Blankenship held a picture of a key and a lock during a conversation with Buntele. Kovach assumed this meant that if the Union came in, the plant would close and the employees would lose their jobs. Respondent did not present any witnesses to these incidents.

Photographing Employees and Union Organizers

Keddick, Fox, and Kovach testified that they saw Blankenship take photographs of them and other employees and union organizers. Individuals identified in the photographs are: union organizer Lewis Tesoro, union interpreter[5] Jayotsna Patel, employee Thackor Patel, organizing representative Michelle Kessler, union organizer Donna Smits,

[5] Many of the employees are of Indian descent.

organizing representative Adele Snyder, employee Judy Mulligan, a union observer at the election, employee Brian Hastie, another union observer at the election, and employee Gladys Fox.

Buntele testified that Blankenship took three or four photographs of union organizers of Indian descent in order to see a form the organizers were handing to employees, although none of the photographs show anyone holding forms. Glenn Gress testified that he did not know that Blankenship took the photographs on the day of the election.

Scalzo testified that several employees expressed to him that they were worried and concerned about having their photographs taken.

Blankenship's Statements to Union Organizers During the Third Polling Session of the Election

At the third polling session, Snyder and Scalzo were standing near the front of the plant and were approached by Blankenship, Buntele, and Glenn Gress.

Scalzo testified that Blankenship stated, ''You should see what Glenn [Gress] has got me. He got me a padlock this big.'' Blankenship held his had about 2 to 2-1/2 feet apart. He stated that the shaft on the padlock was as big as his thumb and too big to take back on the plane with him, so he put it on display in the plant. Scalzo asked him whether the padlock was to put on the door when he closes the plant, to which Blankenship responded affirmatively. Snyder corroborated Scalzo's testimony.

Buntele recalled Blankenship stating that he was hired by the Gresses to shut the plant down and that Glenn Gress had already given him the padlock. Snyder testified that there were several employees within 5 feet of the group having the conversation, and Scalzo confirmed that there were employees in the immediate area.

Glenn Gress, who was present during the conversation, was not questioned by Respondent with regard to same.

Conclusion and Analysis

Jurisdiction

This is not a case pertaining to Respondent's (Associates and Rayford T. Blankenship) labor relations vis-a-vis their own employees. This case involves employer engaged in commerce; therefore, it is of no significance whether Associates and Blankenship meet any standard for assertion of Board jurisdiction. Respondents performed services in excess of $50,000 for employers located in States outside the State of Indiana whom are in Interstate Commerce.

The Board has asserted jurisdiction over a consulting firm, using the same standards applicable to nonretail business. *St. Francis Hospital*, 263 NLRB 834 (1982).

I find that Associates is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Buntele's Speech

Rather than tailor his speech to conform to established legal precedents, Buntele communicated to the employee that Gress would close the plant if the Union got in. Moreover, testimony revealed another version, that Gress would close the plant and move to a warmer climate if the Union came in. These are clear threats of retaliation for supporting the Union, and as such I find they violate Section 8(a)(1) of the Act. Buntele's unrebutted statement that the Company would eliminate part-time jobs is also an unlawful threat which violates Section 8(a)(1) of the Act.

Blankenship's Speech

Blankenship clearly communicated to employees the plant closing motif. References to Gress' history and other employer's closings served to reinforce his threats.

The padlock image very graphically illustrated his message.

Moreover, Blankenship stated that if the Union came in Gress would not bargain with a negotiating committee. Thus, Blankenship's coercive statements violated Section 8(a)(1) of the Act, and I so find.

Blankenship's December 22 and 23 Statements to Individuals

Blankenship's statement to organizers threatening plant closure, made in the presence of employees, was but another flagrant act in violation of Section 8(a)(1). Furthermore, his threats were disseminated between employees and organizers later at a diner, during breakfast. What could be a clearer intent than Blankenship's statement to Beierle that he, Blankenship, was hired to close the plant? There were also discussions about the padlock and a picture of a lock and key held up by Blankenship in proximity to, and in the presence of, employees.

Blankenship can't be accused of subtlety. I conclude that all his conduct set forth above blatantly violated Section 8(a)(1) of the Act.

Blankenship's Removal of ''Vote Yes'' Sign

Blankenship's conduct, removing the ''Vote Yes'' sign from Kessler's car, refusing to return it to a union organizer, and tearing it in half is further restraint and coercion. The vehicle was on a public street and at least one employee was privy to Blankenship's conduct. I therefore conclude that Blankenship's acts in this regard are violative of Section 8(a)(1) of the Act.

Blankenship's Photographing Employees and Organizers

The Board has historically found this conduct, photographing employees and/or organizers, a serious infraction serving to inhibit employees and constituting surveillance. See *Blanchard Construction Co.*, 234 NLRB 1035 (1978).

The Board has found this conduct violative even when the camera didn't contain film! Blankenship has not shown a scintilla of legitimate justification for this action. Blankenship's conduct in this regard violates Section 8(a)(1) of the Act.

Credibility

I specifically discredit Rayford T. Blankenship, particularly where his testimony is at variance with the Government's (General Counsel's witnesses). Board volumes are

rife with similar conduct[6] alleged as committed by Blankenship although perhaps his conduct was more subdued in those instances. My analysis of his veracity is solely based on my impressions of his conduct and demeanor in the instant case.

I fully credit all the General Counsel's witnesses. Their demeanor, scrupulous attention to detail, and certitude were in stark contrast to Blankenship's rendering. I credit Buntele, and find that even accepting his version his statements were violative of Section 8(a)(1) of the Act. Although subjected to name calling and by vituperation on the record by Blankenship, he remained cool and made a sincere effort to testify honestly.

I specifically credit the testimony of employee Charles Sears. On cross-examination he displayed unshakable candor in admitting that he had been convicted for possession of a stolen car. This does not amount to crimen falsi, and I conclude it is not a basis for discrediting Seers.

Agency and Responsibility

Associates and Blankenship were retained by Gress to act as Gress' representatives and with Buntele they performed certain services, albeit illegal ones. They wrote to employees, gave speeches to employees, and addressed employees individually, all on Gress' behalf. That's what they were paid for.

They represented Gress in the representation case at various stages and conferences, and at the election. Buntele signed the tally of ballots.

Respondents are clearly agents of Gress, and as such are employers within the meaning of Section 2(2) of the Act, and are liable for the commission of Section 8(a)(1) conduct.

Respondents' reliance on *Blankenship & Associates*, 290 NLRB 557 (1988), is misplaced.

In that case the issue was whether respondent was liable for unfair labor practices as agents of Diamond. They were consultants to Diamond and were alleged to have counseled Diamond to violate the Act, and with directly committed violations. The administrative law judge concluded that respondents did not *directly* commit unfair labor practices, but they did unlawfully counsel Diamond to grant benefits to employees and to form and dominate an employee committee. The administrative law judge found that respondents were liable for these acts.

The Board reversed, concluding that record evidence did not support *counseling* to form and dominate. Although the Board did find counseling to promise and grant benefits unlawfully, Respondents weren't responsible for Diamond's conduct based on Agency law.

The instant case does not involve any *counseling*. Blankenship and Buntele *directly, personally*, and grossly committed all the violations I have found in this case. I therefore find that both Respondents are fully responsible and liable for the unfair labor practices that they committed.

CONCLUSIONS OF LAW

1. Associates and Gress are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Blankenship is an agent of Associates, and Associates and Blankenship were, at all times material, agents of Gress within the meaning of Section 2(2) and (13) of the Act.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. By Buntele's speech to employees wherein he threatened them with plant closure and more onerous working conditions, Respondents and each of them violated Section 8(a)(1) of the Act.

5. By Blankenship's threat to employees of plant closure and his statements that Gress would not negotiate with the employees on a negotiating committee, Respondents and each of them violated Section 8(a)(1) of the Act.

6. By making threats of plant closure to individuals, Respondent Blankenship and Respondent Associates and each of them violated Section 8(a)(1) of the Act.

7. By Blankenship's removal of a prounion sign, Respondents and each of them coerced and restrained employees in violation of Section 8(a)(1) of the Act.

8. Blankenship's photographing of employees and union organizers was an Act of surveillance in violation of Section 8(a)(1) of the Act.

9. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondents have committed violations of Section 8(a)(1) of the Act, I shall recommend that they be required to cease and desist therefrom and to post appropriate notices and to furnish and give appropriate notices to Gress. As Gress is not a Respondent in this proceeding, I will not and cannot require Gress to post such notices. The Respondent's violations in this case were so egregious and widespread, that in my opinion they warrant a broad order and I will recommend such an order.

An additional basis for a broad order is warranted in view of the fact that Respondents and each of them directly engaged in the commission of unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondents, Blankenship and Associates, Inc. and Rayford T. Blankenship, Greenwood, Indiana, their officers, agents, successors, and assigns, when acting as an agent for any employer subject to the jurisdiction of the Board, shall

1. Cease and desist from

(a) Threatening employees with plant closure and more onerous working conditions.

(b) Threatening employees with plant closure and telling them that Gress would not deal with employees on the negotiating committee in the event that the Union came into the plant.

(c) Removing prounion signs from the automobiles of either employees or union organizers.

[6] Giving speeches to employees to include plant closings and threats of job loss.

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(d) Photographing employees and/or union organizers.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at their Greenwood, Indiana offices copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 4, signed copies of the notice for posting, if Gress Poultry is willing at its Scranton, Pennsylvania plant in places where notices to employees are customarily posted. Copies of the notice to be furnished by the Regional Director for Region 4, after being signed by Respondents' representatives shall be returned to the Regional Director for posting.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''